

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA**

IMHOTEP MUHAMMAD,	:	
Plaintiff	:	
	:	CASE NO: 1:24-cv-2228
v.	:	
	:	<i>Electronically Filed</i>
JOHN DOE,	:	
D/B/A DON TOWING	:	
Defendant.	:	JURY TRIAL DEMANDED

**MOTION TO DISMISS BY DEFENDANT DON’S & SON’S TOWING &
BODY SHOP**¹

Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Don’s & Son’s Towing & Body Shop moves to dismiss the above-captioned Complaint filed by Imhotep Muhammad (“Plaintiff”) on the grounds that it fails to state a claim upon which relief can be granted. To that end, Defendant Don’s & Son’s Towing & Body Shop alleges as follows:

1. Counts 1-5 of the Complaint (ECF No. 1.) are asserted against Defendant Don’s & Son’s Towing & Body Shop. Therein, Plaintiff alleges that Defendant Don’s & Son’s Towing & Body Shop violated his rights under the Fourth and Fourteenth Amendments to the United States Constitution and seeks relief under

¹ The Complaint identifies defendant as John Doe, doing business as Don Towing. Defendant business in fact operates under the name of Don’s & Son’s Towing & Body Shop. This Motion refers to Defendant by its true operating name.

42 U.S.C. § 1983. Plaintiff also alleges that Defendant Don's & Son's Towing & Body Shop committed various tortious acts against Plaintiff under the laws of the Commonwealth of Pennsylvania, including negligence, conversion, intentional infliction of emotional distress, and fraud.

2. According to the Complaint, Defendant Don's & Son's Towing & Body Shop, at the request of Pennsylvania State Troopers, towed Plaintiff's vehicle following Plaintiff's arrest on May 13, 2021. (ECF No. 1.)

3. Plaintiff alleges that Defendant Don's & Son's Towing & Body Shop coordinated with Pennsylvania State Troopers to provide false information to Plaintiff and intentionally mislead him as to the location of his vehicle on May 17, 2021.

4. Plaintiff alleges that Defendant Don's & Son's Towing & Body Shop violated his rights by towing Plaintiff's vehicle without justification or legal authority.

5. Plaintiff further alleges that Defendant Don's & Son's Towing & Body Shop negligently failed to "properly safeguard and accurately inform Plaintiff about his vehicle's location;" "wrongfully took possession of Plaintiff's vehicle;" provided deliberate misinformation to Plaintiff causing "emotional distress, including frustration, anxiety, and humiliation;" and "knowingly provided false information to Plaintiff with the intent to mislead and cause harm." (ECF No. 1 ¶¶ 15-19.)

6. Plaintiff seeks damages from Defendant Don's & Son's Towing & Body Shop in the form of \$50,000 in compensatory damages, and \$250,000 in punitive damages, \$25,000 in equitable damages, "a declaration that the towing of Plaintiff's vehicle was unlawful," and costs.

7. Plaintiff's claim against Defendant Don's & Son's Towing & Body Shop should be dismissed for failure to state a claim upon which relief may be granted for the following reasons:

a. All claims are barred by the applicable two-year statute of limitations for Section 1983 claims and claims under state tort law. *Kach v. Hose*, 589 F.3d 626, 634 (3d Cir. 2009); 42 Pa. C.S. § 5524;

b. At no time relevant did Defendant Don's & Sons Towing act under the color of state law; and

c. In the absence of any federal claims, this Court has no basis to extend supplemental jurisdiction over Plaintiff's tort claims under state law. *See* 28 U.S.C § 1367(c)(3).

8. For these reasons, and those explained more fully in Defendant Don's & Son's Towing & Body Shop's Brief in Support of its Motion to Dismiss, this Court should dismiss this case against Don's & Son's Towing & Body Shop in its entirety.

Respectfully submitted,

Date: February 27, 2025

/s/Zachary A. Toland
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CERTIFICATE OF SERVICE

I hereby certify that on this date, a true and correct copy of the foregoing was served upon the registered parties via the Court's ECF Filing System, and on the Plaintiff at the address below, in the manner indicated:

Via USPS First Class Mail:

Imhotep Muhammad
2140 N 7th Street
Harrisburg, PA 17110

Dated: February 27, 2025

/s/ Zachary A Toland
Zachary A. Toland, Esq.
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